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HSBC

By electronic delivery

January 3, 2011

Ms. Jennifer J. Johnson
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1393

Dear Ms. Johnson:

This comment letter is submitted by HSBC Bank Nevada, National Association ("HSBC") in response to the proposed amendments to Regulation Z ("Proposed Rule") issued by the Board of Governors of the Federal Reserve System ("Board"). The Proposed Rule suggests clarifications to certain provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act"). HSBC appreciates the opportunity to provide comments on the Proposed Rule.

HSBC is part of HSBC North America Holdings Inc., one of the ten largest financial services companies in the United States with assets of $334 billion at June 30, 2010. The company's businesses serve consumers in the following key areas: personal financial services, credit cards, specialty insurance products, commercial banking, private banking, asset management and global banking and markets.

HSBC appreciates the Board's efforts in publishing the Proposed Rule, clarifying many aspects of prior CARD Act rulemaking. Having been promulgated under compressed statutory timing requirements, many areas of the rulemaking required subsequent clarification, and the Boards efforts will significantly aid a card issuer's ability to comply with drastically overhauled Regulation Z requirements applicable to card issuers.

However, HSBC does have some concerns that certain Board proposals create new ambiguity requiring further Board clarification, or pose unintended compliance risk and/or functionality impact to card issuers, which merit further Board reconsideration. HSBC offers the following comments in response to the Proposed Rule:

Section 226.10(b)(4): Nonconforming Payments

The Proposed Rule creates new ambiguity as to what is a 'promoted' payment method, and should not contemplate independent money transmittal companies as being 'promoted' payment methods, requiring conforming payment treatment.

The Board has attempted to provide greater clarification as to the distinction between a conforming payment, which must be credited as of the date of receipt, and a nonconforming payment, which must be credited within five (5) days of receipt. The Board is proposing to amend comment 10(b)-2 to provide that if a card issuer <u>promotes</u> a specific payment method, any payments made via that method (prior to the cut off time) are generally conforming payments. The Proposed Rule provides two specific examples of what constitutes "promotion", which, while helpful, may not be fully explanatory. HSBC seeks further guidance as to the definition of "promotes", particularly as to circumstances where the payment method is not under direct control of the card issuer.

For instance, during a telephone conversation, a consumer might ask the card issuer's customer service representative about payment options, and in response, the customer service representative could provide a listing of those options. Would a third party payment option, such as Western Union, be considered a <u>promoted</u> payment option merely because the card issuer listed it as one of the options even though the card issuer has no direct control over receipt and handling of that payment? If so, must the card issuer post the payment that is received via such third party as of the same day in order for it to be conforming?

In the above example, HSBC submits there is a distinction between actual promotion of a payment option and simple response to consumer inquiry as to payment method alternatives. Operational challenges and institutional costs would result should a card issuer be required to treat such payments, remitted through an independent third party, as conforming. This would entail significant additional interaction between the card issuer and the third party, including potentially systems connectivity and creation of contractual duties owed by the third party to the card issuer to ensure its compliance. Further complicating such efforts, there may be an intermediary involved between the money transmittal company and the card issuer. The Board should also consider the potential negative impact to consumers if, due to such challenges, some card issuers remove certain payment methods from its suggested payment alternatives. In sum, however, this new clarification is adding ambiguity rather than clarifying.

Section 226.10(e): Limitations on Fees Related to Method of Payment

It is not feasible for a card issuer to monitor service fees charged by independent funds transmittal companies, and the Board should therefore not prescribe that these independent companies are accepting payment on behalf of a card issuer.

The Board has stated in its section by section analysis of the Proposed Rule that it "believes that it would be inconsistent with the purposes of the [CARD Act] for consumers to pay a separate fee for making a payment through a third party who is receiving payment on behalf of the card issuer, unless the card issuer itself would be permitted to charge the fee." HSBC seeks greater clarification as to what "separate fee" means, and what "on behalf of the issuer" means. For instance, if a consumer voluntarily utilizes the services of a third party provider for payment transmittal services (e.g. Western Union, Moneygram) to quickly and conveniently remit payment on to a card issuer, that third party servicer might charge the customer a fee.

It is unclear (and probably incorrect) as to whether that third party service provider is actually receiving the payment "on behalf of the issuer". Instead, the payment is actually being received by the third party <u>on behalf of the consumer</u>, who is enlisting the aid of the service provider in order to send a payment that is owed to the card issuer. This fact pattern is similar to one in which a consumer uses an overnight courier to expedite payment to a card issuer, in which the consumer pays a fee to the courier, not the card issuer who ultimately receives the payment. As a result, this new clarification seems misplaced, and creates ambiguity.

Section 226.51: Ability to Pay

Consideration of household income or assets should by itself satisfy the requirement to consider the consumer's ability to pay.

Nothing in the CARD Act legislative history suggests that Congress intended to prohibit the consideration of household income in evaluating an individual's ability to pay. As passed by Congress, the CARD Act simply requires card issuers to consider the consumer's ability to make the required payments on an account before a card issuer opens a credit card account or increases the credit limit applicable to an account. The CARD Act only included an "independent" means test in connection with under-age credit applicants. We believe that Congress intended to establish a stricter standard for under-age applicants as compared to the general population. The proposed clarification will unfairly restrict credit to the general population because it prohibits card issuers from using household income when considering ability to pay, unless both spouses are joint applicants or the spouse applying alone lives in a community property state.

HSBC is concerned that such a narrow interpretation of income will adversely impact women not working outside the home. Prior Board policy has sought to avoid perpetuating the cycle whereby a homemaker spouse fails to build creditworthiness when the income earning spouse is the only individual named on marital debt. If the proposed clarification were to require consideration of the applicant's independent income, presumably all marital credit would have to be requested in the name of the income-earning spouse, and the non-working spouse would not have access to credit. We have many merchant relationships, and believe that this proposed clarification will result in deterring non-working spouses from applying for in-store credit because of the embarrassment associated with being denied credit in the store in front of other store customers. Non-working women should not be subjected to this type of disparate treatment, especially considering that this requirement would apply only to credit cards and not to other forms of consumer loans.

The Equal Credit Opportunity Act, as implemented by Regulation B, sought to protect non-working women by requiring lenders to consider accounts reported in the name of the working spouse in evaluating a non-working applicant's ability to repay the debt. Section 202.5(c)(2)(iii) of Regulation B implies that an applicant may indicate marital income "if the applicant is relying on the spouse's income as a basis for repayment of the credit requested." Further, 202.6(b)(5) provides that a creditor shall not discount or exclude from consideration the income of an applicant *or the spouse of an applicant* because of a prohibited basis… ." The proposed clarification would conflict with these important provisions that provide equal access to credit for non-working women, and we request that the Board balance the concern that consumers potentially may inflate their income figures when asked to provide "household" income with the potential unfair treatment of non-working women. Specifically, we ask that the Board clarify that a card issuer is not restricted from considering household income under Section 226.51.

Section 226.52(a)(1): Limitation on Fees

The Board should define the first year of an account to begin at account opening, and should avoid concepts which involve card issuer estimation, which subject them to unnecessary risk of compliance failure.

HSBC largely supports the Board's clarifications to limitations of fees in the proposed clarifications to § 226.52(a)(1), which implement CARD Act amendment to TILA Section 127(n)(1). HSBC understands and agrees with the

Board's rationale in including certain account related fees collected before an account is opened.

However, we believe the Board is creating unnecessary operational complexity in further clarifying when the first year of a credit card account begins and ends. Specifically, the Proposed Rule provides:

> "The Board is also aware of some confusion regarding when the one-year period in § 226.52(a)(1) begins and ends. For this reason, the Board proposes to further amend § 226.52(a)(1) to provide that, for purposes of that paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions."

Through this clarification of what was an unambiguous requirement, card issuers would be required to estimate the 'first year' of certain accounts, exposing them to unintentional non-compliance.

Many HSBC cardholders have ability to utilize the credit account for transactions immediately on the date the account is opened, such as in connection with retail credit programs where a consumer may authorize transactions immediately upon credit approval. For these accounts, there would be no complexity to commence the beginning of the first year when the account may be used for transactions, which coincides with the account open date.

However, many other HSBC card accounts are issued following its receipt of a mail, phone or internet application. For these accounts, U.S. postal delivery of the credit card must occur, some number of days following account opening, before the account may conceivably be used for transactions. Unless a card issuer tracks each individual mailed card for a delivery date, it could only estimate when card delivery actually occurs, enabling use of the account for transactions.

Seemingly, a card issuer would be required to conservatively estimate when an account may first be used for transactions, for example, 7-10 days after the credit card is mailed. Accordingly, it would need to build systematic functionality to cause §226.52(a)(1) protections to extend 10 days into the second year of the account. Failing to adjust for estimated card delivery, a second annual fee charged on the anniversary date of account opening would become calculable as a fee assessed during the first year of the account, and could cause failure of the first year fee limitation.

Even if a card issuer were to build system functionality to time §226.52(a)(2) protections with an estimated card delivery date, it would nevertheless always bear compliance risk of scenarios beyond its reasonable control. For example, if a card issuer systematically estimated 10 days for card delivery, any card may experience U.S. postal service delay which would be unknown to the card issuer. Unless it tracks delivery of every card issued, a card issuer could never have absolute certainty that a second annual fee is imposed more than 1 year after a card was actually delivered.

Furthermore, in the event the initial mailed card was lost in the mail and not received, the card issuer would need to re-mail the credit card. In doing so, it would presumably be required to restart the clock, making a new estimation of when the re-mailed card would be received and capable of being used for transactions. This could require manual adjustment of individual accounts, resetting the beginning of the 'first year' duration to be in accord with the period described in the Proposed Rule. Again, any failure could cause a second annual fee to be calculable during the ‘first year’ of an account, subjecting the card issuer to compliance risk.

We believe the Board’s proposal creates unnecessary complexity, and that it would be better to consider that a credit card account is opened as of the date the credit card account was established. While HSBC understands the Board's rationale in commencing the first year as of the date an account may be used for transactions, the operational complexity of managing to a variable commencement date for certain accounts, and the risks associated with relying upon an estimated card delivery date for compliance, are not counterbalanced by meaningful consumer protection. Generally, cards are delivered within days after an account is opened. HSBC comments that the Board should implement a uniform and readily determinable commencement date, such as the account opening date. This will provide the substantive consumer protections envisioned by the CARD Act, while enabling certainty of compliance for card issuers.

Section 226.58: Internet Posting of Credit Card Agreements

HSBC agrees with the Board’s approach to the definition of pricing information, the timing of quarterly submissions, and the submission of amended agreements.

This section of the CARD Act requires card issuers to post agreements for credit card plans on web sites and to submit agreements to the Board for posting on a publicly available web site established by the Board. Generally speaking, HSBC believes the Board’s proposal to clarify the requirements set forth in this Section is helpful and should be implemented.

A new Section 226.58(b)(4) would define the term "card issuer" to mean the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement. HSBC agrees that this clarification should be made, given the various relationships that card issuers enter into with other institutions relating to the issuance of credit cards.

The Board proposes to amend Section 226.58(b)(6) to omit the information listed in Section 226.6(b)(4) from the definition of pricing information. HSBC agrees that card issuers should not be required to provide the items set forth in that section. Given the pricing terms that are submitted to the Board, the periodic rate, as an example, is confusing and not helpful to consumers. Further, the other terms relating to rates in Section 226.6(b)(4), such as the circumstances and frequency under which a variable rate may increase and any limitation on the amount a variable rate may change, are not particularly helpful to consumers in connection with the submissions to the Board. It is HSBC's view that the burden under this section of including these particular disclosures with the agreements outweighs the benefits.

With respect to 226.58(c), HSBC supports the Board's proposal to clarify the timing of quarterly submissions and to clarify that card issuers are required to submit amended agreements to the Board only if the card issuer offered the amended agreement to the public as of the last business day of the preceding calendar quarter, which would eliminate the confusion that may occur if the agreements are revised during the quarter. HSBC also agrees that the regulation should be clarified to state that the billing rights notices are not required to be included in agreements submitted to the Board.

HSBC agrees with the proposal to revise the comment 58(e) to clarify the application of Section 226.58(e)(2) relating to third-party interactive web sites.

Section 226.59: Reevaluation of Rate Increases

Changes in the type of rate should not trigger the rate reevaluation requirements.

The Proposed Rule provides that a change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate is not a rate increase under this Section if the rate in effect immediately prior to the change in the type of rate is equal to or greater than the rate in effect immediately after the change. HSBC agrees with this clarification, but the Proposed Rule further provides that an increase in a variable rate constitutes a rate increase if the variable rate exceeds the rate that would have applied if the change in type of rate had not occurred. HSBC does not believe that it is appropriate to require a rate reevaluation when there is a change in the type of rate or the removal of a rate floor where over time, the variable rate differs from the non-variable rate due to the operation of an index.

For example, if the rate in effect prior to the change was a non-variable rate of 18.99%, and the card issuer changed the rate to a variable rate of Prime (3.25%) plus 15.74% or 18.99%, we do not believe that the card issuer should be required to conduct a rate reevaluation with respect to this account at some point in the future just because the Prime rate may increase over time. Card issuers don't know at the time of the rate change whether the index will increase or decrease in the future. The index will change based on market factors, which are not in the control of the card issuer and which may benefit either the card issuer or the consumer over time. A variable rate structure allows card issuers to manage market risk by use of the index, but the Board's proposal will reduce the effectiveness of this structure while additionally burdening card issuers with a costly and time consuming ongoing rate review process. We ask that the Board reconsider this proposal and clarify that where the rate change does not result in an immediate rate increase, these types of rate changes do not trigger the requirement to conduct a rate reevaluation.

HSBC agrees with the proposed clarifications to Section 226.59(f) which provide that where the card issuer is offering lower rates on similar new accounts, the requirement to perform a rate reevaluation on an existing account will terminate when the rate on the existing account is reduced to the rate that was in effect prior to the rate increase, and not to a lower rate that would be offered to a new consumer.

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Once again, HSBC appreciates the opportunity to provide its comments on the Proposed Rule. If you have any questions regarding our comments, please do not hesitate to contact James Hanley at (952) 294-1065 or Donna Radzik at (224) 544-2952.

Sincerely,

James Hanley
Senior Counsel

Donna Radzik
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